92-944

NO._____

Supreme Court, U.S.
FILED
NOV 30 1992
OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1992

M. WILEY CATLETT, "the Heir"
OF THE ESTATE OF ERNEST
LUTHER CATLETT, DECEASED PETITIONER,

v.

JOHNNY W. RICHARDS, II, INDIVIDUALLY, and as SUCCESSOR DEPENDENT ADMINISTRATOR OF THE ESTATE OF ERNEST LUTHER CATLETT, DEC'D., FLORENCE IONA CATLETT, ROBERT M. BURNETT, JUDGE, PROBATE COURT NUMBER ONE, TARRANT COUNTY, TEXAS RESPONDENTS

PETITION FOR WRIT OF CERTIORARI TO THE SECOND COURT OF APPEALS DISTRICT OF TEXAS THROUGH THE SUPREME COURT OF TEXAS

PETITION FOR WRIT OF CERTIORARI

M. WILEY CATLETT, "the Heir"
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QUESTIONS PRESENTED

I. Since, the 5th Amendment of the U. S. Constitution states: " . . . that no person shall be deprived of life, liberty or property without due process of law and the 14th Amendment states: " . . . Sect. 1, Due Process of Law . . . nor shall any state deprive any person of life, liberty, or property, without due process of law.", the instant question is did the State of Texas through its Probate System and its appointed or elected officials, Judge Robert M. Burnett, Probate Court Number One, Tarrant County, Texas and Johnny W. Richards, II, the duly appointed and sworn, Successor Administrator of the Estate of Ernest Luther Catlett, Deceased in No.77-2726-1 by appointment on March 22, 1984 (R.119, Item # 41) did make his "MOTION FOR AUTHORITY TO SELL REAL PROPERTY" on June 18, 1984 (R.123, Item #38) approved on July 18, 1984 by Judge Burnett, to sell some alleged 39 acres of land purported to belong to Ernest's Estate and

on October 19, 1984, Richards did sell that land to some clients of his, and without any "notice" or "hearing" to the real owner, "the heir" , M. Wiley Catlett, a citizen of the State of Illinois (R.134,Item#34); hence, did they divest "the heir" of the title which vested in "the heir" at the intestate's death, thereby, depriving him of his property without "due process of law" in violation of the 5th and 14th Amendments of the Federal Constitution?

II. In Texas, "The Court administers the estate, not the administrator." and there is a special confidential and fiduciary relationship between the Probate Court Judge (Robert M. Burnett) who really administers the estate (The Estate of Ernest Luther Catlett, Dec'd., No.77-2726-1, Tarrant County, Texas) and its sole "heir" (M. Wiley Catlett); hence, the question is: Can Probate Court Judge Burnett who outside of his immunity be held accountable under law where he threatened the "heir" (an Illinois citizen) by saying: "I'll see that

you don't get anything from your father's estate." ; and where Judge Burnett with the assistance of "Richards" and others, in collusion, Judge Burnett Carried out that threat made outside of his immumity?

III. Does Tim Curry, the Criminal District Attorney of Tarrant County, Texas have the authority to represent Judge Burnett, the Probate Judge in Court No. 1, Tarrant County, Texas who is charged with extrinsic fraud in this action ; hence, does "Tim Curry" have a conflict of interest?

IV. Does Judge Burnett and his appointed Successor Administrator ("Richards") have the authority to sell some purported 39 acres of land out of the "heir's" grandfather's & grandmother 225.1 acre AUBREY, TEXAS Farm, where there has been no "legal partition" between the estate and the purported living cotenant, Florence Iona Catlett, attorney John R. Lively's client?

V. In Texas, all orders & judgments & deeds which convey title to real property (the land) must contain a sufficient description of that

land to be conveyed, as required by the Texas Statute of Frauds, V.T.C.A., Bus. & C.,Sect. 26.01; BOODY v. GRAY(Tex.Civ.App. - 1973) 497 SW2d 600 at p.603; Hence, the question is: Are the following orders & judgments null & void where each contains the insufficient legal descriptions of that land as prepared by Attorney John R. Lively (Flo's attorney) for the judges in those orders and judgments:

(A) - Judge Burnett's, MAY 14, 1981, ORDER CONFIRMING SETTLEMENT, No.77-2726-1, Tarrant County, Texas, In Re: The Estate of Ernest Luther Catlett, Dec'd. (R.38; ST/F - I; Appendix "M", App.22 - 25

(B) - Judge Albert L. White's SEPT. 15, 1981, "Agreed Judgment", No.236-39718-76, 236th Dist.Ct., Tarrant County, Tx., styled: M. Wiley Catlett, Admin. of The Estate of Ernest Luther Catlett, Dec'd. vs. Florence Iona Catlett, Individually & as Executrix of the Estate of Pharon C. Catlett, Dec'd., et al (R.306,Dec. 13, 1991; Appendix "M", App. 22 - 25

(C) - Judge Narsutis' three (3) OCT. 4-4-14, 1982 Judgments, No.81-8158-B, 158th Dist. Ct., Denton County, Tx., styled: Florence Iona Catlett vs. M. Wiley Catlett, Admin.of the Estate of Ernest Luther Catlett, Dec'd., et al (Appendix "M", App. 22-25.

VI. Did the "heir's" father, Ernest Luther Catlett, inherit 100% of his grandfather's & grandmother's 225.1 acre AUBREY, TEXAS farm?

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NO. _____

IN THE

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OCTOBER TERM, 1992

M. WILEY CATLETT, "the Heir"
OF THE ESTATE OF ERNEST
LUTHER CATLETT, DECEASED — PETITIONER,

v.

JOHNNY W. RICHARDS, II, INDIVIDUALLY, and as SUCCESSOR DEPENDENT ADMINISTRATOR OF THE ESTATE OF ERNEST LUTHER CATLETT, DEC'D., FLORENCE IONA CATLETT, ROBERT M. BURNETT, JUDGE, PROBATE COURT NUMBER ONE, TARRANT COUNTY, TEXAS — RESPONDENTS

PETITION FOR WRIT OF CERTIORARI TO THE SECOND COURT OF APPEALS DISTRICT OF TEXAS THROUGH THE SUPREME COURT OF TEXAS

Petitioner, M. Wiley Catlett, the Heir, respectfully prays that a writ of certiorari issue to review the Opinion and Judgment of the Second Court of Appeals District of Texas threugh the Supreme Court of Texas dismissing Petitioner's appeal relying only on "Flo's", Florence Iona Catlett's Motion to Strike and

for damages filed in this action on FEB. 7, 1992 (late).

Respondent, "Flo's" motion to strike the whole pleadings is in effect a general demurrer, City of Brownville v. Galvan, 139 TEX. 128, 162 SWd 98 (1942). The use of a general demurrer has been eliminated from TEXAS PRACTICE; BANKER v. JEFFERSON COUNTY NO. 1, 277 SW2d 130 (TEX.CIV.APP. 1950) n.w.h.; RULE 90, TEX.R. CIV.PROC.

Therefore, "Flo's" motion to strike & for damages, is null and void, as is Justice's Day's FEB. 25, 1992, OPINION and JUDGMENT, Appendix "E", since Justice Day based his Opinion on "Flo's" null & void motion.

> "But if it act without authority its judgments and orders are nullities they are not voidable, but simply void, and form no bar to a recovery sought, even prior to a reversal . . . . "
> ELLIOTT v. PEIRSOL, 1828, 1 Pet 328, 7 L.Ed. 164 at p.170.

Further, the Heir", Petitioner, prays that a writ of certiorari issue to review the settled rule of law regarding those special confidentital & fiduciary relationships between the "Heir" of the estate and the judge

in a Texas Probate Court who administers the estate (JONES v. GILLHAM,(TEX.SUP.CT. 1919), 212 SW 930) and the successor administrator. In the instant case, Judge Burnett and his Successor Administrator, Johnny W. Richards, II (R.119,Items#41-42, Order of 3-22-84) practiced a pattern of waste and of the squandering and the payment of sham and false claims against the "Heir's" father's estate.

Specifically, It was on August 19, 1982, the time was after the hearing had concluded on attorney Steven J. Williams, "Motion to withdraw as Counsel in Ernest's estate". It was difficult for the "Heir" who at that time had a Writ of Error before The Supreme Court of Texas and now was without an attorney. We were still in the courtroom; however, it was outside of Judge Burnett's immunity since the hearing had concluded, when Judge Burnett came over to the "Heir", M. Wiley Catlett, and threatened the "Heir" an Illinois citizen by saying: "I'll see that you don't get anything from your father's estate.". With the assist-

ance of the Successor Administrator, "Richards" and others in collusion, Judge Burnett carried out that threat of his.

Still further, the SUPREME COURT OF THE UNITED STATES is asked to review an unusual constitutional question which may have never been decided as it relates to the State of Texas' Probate Court system and the sale of land purported to belong to the estate; however that land was sold by the Successor Administrator, "Richards", with the approval of the judge of the Probate Court without any "notice" or "hearing" to the real owner of that land, the "Heir"; hence, did they (the Judge and Richards) divest "the Heir" of the "title" to that land which vested in "the Heir" at the intestate's (Ernest Luther Catlett the "Heir's" father) death on June 1, 1977; thereby, depriving "the Heir" of his real property (the land) without "due process of law" in violation of the 5th & 14th Amendments of the Federal Constitution?

OPINIONS BELOW

The 9-9-92, opinion of The Supreme Court of Texas overruling petitioner's motion for rehearing, see Appendix A, unpublished (Note: John T. Adams, CLERK, failed to notice Johnny W. Richards, II, Successor Administrator). The 6-24-92, opinion of The Supreme Court of Texas denying writ of error, "Writ Denied", Appendix B, unpublished, No.D-2437. (Note: John T. Adams, CLERK, failed to notice Richards) The 4-22-92, opinion of The Court of Appeals, Second District of Texas overruled their opinion & judgment of FEB. 25, 1992, APPENDIX B.1, unpublished, No.2-91-213-CV. The 3-26-92, order granting rehearing, Appendix C. The 3-16-92, order for rehearing denied, Appendix D , unpublished, Court of Appeals, Second District of Texas.

The unpublished opinion and judgment of The Court of Appeals, Second District of Texas, Appendix E, dismissal of appeal, signed by Sam Day, Justice without any date of signing, ss such, based on Florence Iona Catlett's motion

motion to Strike, filed, FEB. 7, 1992(late). TEX.R.CIV.PROC.R.306a & R.329b,subd.5, Ex Parte Godeke (TEX.SUP.CT. 1962) 355 SW2d 701. STAMPED:FEB. 25, 1992. The unpublished order for Ext. of Time GRANTED IN PART, Court of Appeals, Appendix F. The unpublished order overruling exception to part of DEC. 9, 1991 order is overruled, Appendix G. The DEC. 9, 1991 unpublished order of the Court of Appeals granted an Ext. of Time. to JAN. 6, 1992 to file transcript, Appendix H. The Nov. 21, 1991 filing of Peggy Ramsey's sworn "AFFIRMATION TO REQUEST FOR STATEMENT OF FACTS" , the official court reporter of Probate Court No. 1, appears in Appendix I, No.2-91-213-CV. The ~~February~~ August 6, 1991, No.77-2726-1, Probate Court No. 1, Tarrant County, Tx., In Re: Ernest's estate, Judge Burnett filed his "ORDER CLOSING ESTATE AND DISCHARGING PERSONAL REPRESENTATIVE" (Note: "February" is lined out, with the month of "August" written in above without any initials of Judge Burnett approving same, appears in Appendix "J"

The February 13, 1991, sworn "APPLICATION TO CLOSE ESTATE AND TO DISCHARGE PERSONAL REPRESENTATIVE" of Johnny W. Richards, II, No.77-2726-1, Probate Court No. 1, Tarrant County, Tx. , it appears in Appendix "K" herein (R.3, Item#274, order R.277, Item#2).

The May 18, 1983, J U D G M E N T (unpublished) , No.2-82-212-CV, Court of Appeals, Second District of Texas, appears in Appendix "L" to this petition. Which REVERSED & REMANDED, Judge John Narsutis' three Judgments of OCT. 4-4-14-82 with all costs $884.00 against Florence Iona Catlett which still are unpaid to the Administrator, M. Wiley Catlett's, attorneys, Whitten & Loveless of Denton, Tx. That was "Flo's" pqrtition action in 158th D. C., Denton County, Tx. where the land is, No.81-8158-B, below. Hence, due to the Court of Appeals, May 18, 1983 J U D G M E N T , reversing & remanding "Flo's" partition action there has been no legal partition of that Aubrey, Texas farm of the "Heir's" grandfather & grandmother.

The unpublished order of Judge Burnett on FEB. 8, 1985, "ORDER AUTHORIZING PAYMENT OF CLAIM" for $41,684.00 to "Flo's" attorney John R. Lively, appears in Appendix "N". The 3-11-85 order to pay Steven J. Williams, attorney, $5,172.48, see Appendix "O". The 2-20-85 order to pay Successor Administrator, $2,400.00 in attorney&s fees, see Appendix "P". The 1-25-85 "AUTHENTICATED CLAIM OF JOHN R. LIVELY" for $42,228.00, see Appendix "Q". The 5-18-88, "SUCCESSOR DEPENDENT ADMINISTRATOR'S REJECTION OF CLAIM" of the law firm of Winn, Beaudry & Virden, see Appendix "R". The 2-13-86"MOTION & ORDER FOR PAYMENT OF CLAIM" for $3,178.17, see Appendix "S". The 7-18-84 order by Judge Burnett approving the sale land purported to belong to the estate, see Appendix "T".

JURISDICTION

The Court of Appeals' Opinion & Judgment in this matter was filed on FEB. 25, 1992 by "stamp", J. Sam Day neglected to show the date of his signing. On MAR. 23, 1992, the "Heir" filed his "Motion for Extension of Time to file his Motion for Rehearing which was granted to APR. 13, 1992. The same was denied on APR. 22, 1992. Respondent had filed a Response on APR. 16, 1992. A timely Application for Writ of Error was filed with the Clerk of the Court of Appeals, as required, with the Clerk of the Court of Appeals on MAY 21, 1992 and filed in The Supreme Court of Texas on MAY 26, 1992. The same was denied and a timely Motion for Rehearing was filed on JUL. 10, 1992. However, it was file marked a second time on JULY 23, 1992 because the "Heir" unknowingly enclosed his $5.00 check for the filing fee. After being advised by John T. Adams, Clerk of the correct fee another $5.00 check was mailed to the Clerk on JULY 14, 1992

The Supreme Court of Texas' denial of that Petition for Rehearing was issued on SEPT. 9, 92 and is set forth in APPENDIX "A".

This Court's jurisdiction is invoked under Title 28 U.S.C.,Sect. 1257(a); HOWLETT v. ROSE, (1990) 496 US 356, 110 L.Ed 2d 332 at 335, 110 S.Ct. 2430, citing jurisdiction under 28 USC, Sect. 1257(a); Cipollone,Individually, and as Executor of the estate of Cipollone v. Liggett Group, Inc., et al (1991) 500 US ___, 120 L.Ed 2d 407, at 418, 112 S.Ct. ___ Certiorari to the United States Court of Appeals for the Third Circuit. Because of the manifest importance of the issue, we granted certiorari to resolve the conflict.

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THE CONSTITUTION OF THE UNITED STATES

ARTICLE III.

"SECTION 2. The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or . . . . - to Controversies between Citizens of different States . . . "

AMENDMENT V

" . . . . . nor deprived of life, liberty or property, without due process of law; nor shall private property be taken for public use, without just compensation."

AMENDMENT XIV

" Section 1. . . . . No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law, nor deny any person within its jurisdiction the equal protection of the laws."

STATMENT OF THE CASE

Your Petitioner, M. Wiley Catlett, is a citizen of the United States of America and a citizen of the State of Illinois, and the sole "Heir" of Ernest Luther Catlett, his father.

On August 10, 1976, "Wiley" was appointed as the permanent guardian of the person of his

father, Ernest, an incompetent. Ernest was senile, and he suffered from Chronic Organic Brain Syndrome, being about 89. Cause No. 76-1182, Probate Court No. 1, Tarrant County, Texas by order of Judge Robert M. Burnett. (R. ,Item# 64B).On June 1, 1977, Ernest died, "Wiley" was appointed Administrator of his father's estate, No. 77-2726-1, Tarrant County, Texas, Probate Court No. 1 by order of Judge Burnett.(R.24,Item #64C). It was puzzling to find that his father had no funds.

Wiley and his father lived together in Chicago where Ernest worked for the Illinois Central Railroad for many years. We even had a joint bank account in the Northern Trust Company of Chicago. As a matter of fact, Ernest took $7,000.00 from that account and went to Walnut Springs, Texas in 1944 and bought the 414.6 acre farm in Bosque County, Texas which his brother Charlie, Charles, a/k/a C. E., a/k/a, Edward Catlett had been renting after the large house on the homestead of their father, James L. Catlett and wife, A. E. Catlett, had

mysteriously burned down.

In 1944, Ernest paid $15,562.50 for that Walnut Springs, Tx. farm. Charlie bought it from his senile older brother, Ernest, in 1952 for only $15,000.00, so Ernest should have had at least $15,000.00.

On NOV. 20, 1966, Charlie sold that 414.6 acre Walnut Springs, Tx. farm to R. E. CLARK, JR. and his wife for $10,000.00 cash and a Vender's Lien Note of $52,250.00 at 5% payable annually to 1992.

Their younger brother's names are several, Pharon Crawford Catlett, a/k/a, Sam, a/k/a, S. C., (used in the May 16, 1929 deed to Charlie) a/k/a, P. C. Catlett, a/k/a, Pharon C. Catlett, a/k/a, who died in SEPT. 19, 1975 leaving a will in which he disinherited his daughter, Gladys, by another marriage. Gladys had stated that her father, Pharon C. (S.C.) Catlett was never divorced from her mother.

Wiley, when he was a young boy would visit his grandfather's & grandmother's Aubrey, Texas farm every summer, so he knew Charlie and "Sam"

(which ever one called him - not "Pharon")well. "Sam" stole Wiley's watch one summer and pawned it in his name. Florence Iona Catlett, Respondent herein, is the Independent Executrix of P. C. Catlett's estate and the purported living co-tenant of the Aubrey, Tx. Farm, with a 5/6 th interest. Ernest's estate is purported to own the other 1/6th interest. Hence, "Flo" is a necessary & interested party herein.

With regard to "Pharon's" interest in that farm, the following facts are germane.

The "Heir's" grandmother, A. E. Catlett, died during the flu epidemic of 1918-1922, intestate on FEB. 3, 1918 as did their three daughters, Lula, Sula, and Ola. Ernest's estate's interest of 1/6th the attorney's say came through the grandmother's side.

On DEC.12 1928, James L. Catlett, the "Heir's" grandfather died leaving a will by which all of his property decended to Charlie who remained unmarried without any children & who stayed with his father, James L. Catlett.

The important fact is that on MAY 16, 1929,

S. C. Catlett (Pharon) deeded his entire interest in the Aubrey, Tx. Farm to C. E. Catlett (Charlie) for money. Then, about six years later, C. E. Catlett, (Charlie) recorded that deed in the Deed Records, Denton County, Tx., vol.258, pages 251-252. Hence, we know their intentions from their writings. (Pharon) S. C. Catlett therein stated that it was his intention to sell to C. E. (Charlie) Catlett his 1/3rd interest in the Aubrey, Texas Farm.

Therefore, (Pharon) no longer had any interest whatsoever in the Aubrey, Texas Farm.

At the request of Judge Burnett inErnest's Estate, attorney William Smith, Jr. "Wiley's" attorney at that time, wrote a brief which proved that based on the SECOND PROVISION of Charlie Catlett's will (R.27) Ernest inherited 100% of that farm. "Flo's" attorney A. Bruce Wilson submitted a brief also. Judge Burnett in effect denied "Wiley's" position by not making a decision. See pages 31 thru 35 in the "Heir's" APPLICATION for WRIT OF ERROR to the SUPREME COURT OF TEXAS and pages 42 thru 46 in

"Wiley's" Brief for Appellant to the Court of Appeals and on page 7 in the "Heir's" MOTION FOR REHEARING to the Supreme Court of Texas.

Hence, the "Heir's" position, as stated, all along is that his father inherited 100% of his grandfather's and grandmother's Aubrey, Tx. Farm under the laws of descent and distribution - Ernest was the last survivor - or through a construction of the second provision of Charlie Catlett's will (R.27). Therefore, the "Heir's" POSITION is not without merit or fivolous.

See: EVIDENCE SHOWS THAT:
ERNEST LUTHER CATLETT INHERITED
100% OF THE AUBREY, TEXAS FARM

in the argument section on pages, 55 -61

Charlie Catlett died on 8-26-74 and Ernest died on 6-1-77; therefore, under Charlie's will (R.27) the three (3) payments & interest which came due under the CLARK Vender's Lien Note belonged to Ernest; He never got that money. "Flo" & "Pharon" stole it, some $11,454.81.

On about 1-19-73, Charlie and Pharon took Ernest from the nursing home (now Hilltop) near

Ft. Worth and they drove Ernest to the Pilot Point National Bank where they got Ernest to withdraw $18,000.00 from his account. Then, they,Charlie & Pharon, deposited that money in their account in the Fort Worth S & L Ass'n.

Also on 1-19-73, Charlie & Pharon got Ernest to sign Deed No.19329,Vol.686,pages 165 -166, Denton County, Tx.Deed Records conveying their interest in the Aubrey, Texas Farm to Pharon, except for a life estate. That deed deed was used by the surveyor Joy Green of Schoell, Field & Assoc.,Inc. of Denton , Tx. (hired by John R. Lively, "Flo's" attorney & later they were paid out of Ernest's estate by the Successor Administrator, Johnny W. Richards on Judge Burnett's order, $3,178.17) as a bases of their survey on the ground. Further, that deed, #19329, is null & void due to the insufficient description of the land in it. For example: the Fifth Tract: Being a part of the John Jordan Survey in Denton County, Tx. and described as follows: (NOTE: Then there is no description what-so-ever follows;)

On 4-26-75, which was after Charlie died on 8-26-74, Pharon "Sam, S. C." Catlett got Ernest to sign a "QUIT CLAIM DEED", #6521, vol. 742, pages 782 & 783,Deed Records, Denton Co., Tx., in which Ernest turned over - gave up his rights, to lands in "TARRANT" County, Tx.(NOTE: the land is in Denton County, Tx. with insufficient descriptions of that land and without any consideration from Ernest & at a time when Ernest was incompetent.

Florence Iona Catlett is also necessary because on 9-23-76 she became Administrator with will annexed of the Estate of Charlie Catlett, Dec'd. with bond of $50,000.00. (R.27).

With that background, the "Heir" will move ahead to the matter of the closing of Ernest's estate by Judge Robert M. Burnett and the extrinsic frauds committed by him against the "Heir" in collusion with "Richards" and others.

(1) - M. Wiley Catlett is the heir of decendent, Ernest Luther Catlett, Deceased; therefore, he is an interested & necessary & indispensable party in Ernest's estate. V.A.T.S.

ProbC.,Sects. 3(o) & 3(r)

"Title to property is not suspended on the death of the owner. The law effects the devolution to the heirs at law, and that devolution takes place instantly on the intestate's death, and once the estate vests in the heir it is not within the power of the legislature to disturb his rights therein." F.A.T.S.,ProbC., Sect. 37

Further see, the April 22, 1986, "JUDGMENT DECLARING HEIRSHIP/Approved (R.193); V.A. T.S.,ProbC.,Sects 49 & 50, The "Heir" was never notified of those proceedings, nor were they held in accordance with Texas law (R.193).

"Whether property passes under will or by descent & distribution, title vests immediately on death of owner, and there is never a time when title is not vested in somebody, ZAHN v. NATIONAL BANK OF COMMERCE (1959) CA 5th Dist.) 329 SW2d 783,writ.ref.n.r.e.

Also in this connection see, Item #7 of "Richards" ACCOUNT FOR FINAL SETTLEMENT, FILED July 17, 1990 (R.241)

(2) - On February 19, 1991, "Richards" filed his "APPLICATION TO Close Estate and to Discharge Personal Representative" which was not mailed to the "heir" until @ AUG. 15, 1991 (R.274) which was received by the "heir" @ AUG. 19, 1991. APPENDIX "K"

(3) - On August 6, 1991, (Note:"February" is lined out, without Judge Burnett's initials, using a rubber stamp signature) his "ORDER CLOSING ERNEST'S ESTATE & DISCHARGING REPRESENTATIVE" (R.276) which "Richards" mailed to the "heir" @ AUG. 15, 1991, received @ AUG. 19, 1991. APPENDIX "J"

Judge Burnett's 8-6-91, ORDER CLOSING ESTATE (R.276,Item#1; APPENDIX "J") is certainly a final appealable order. TEX.PROB.CODE, Sect.5 (e) which provides: "All final orders of any Court exercising original probate jurisdiction shall be appealable to the courts of (civil) appeals."

(4) - On SEPT. 4, 1991, the "heir" FILED his "MOTION to "Set-Aside" (R.277, Item #2) "BURNETT'S" ORDER OF AUGUST 6, 1991 (R.276,Item #1) CLOSING ERNEST'S ESTATE & DISCHARGING REPRESENTATIVE", In Re: The Estate of Ernest Luther Catlett, Deceased, No.77-2726-1, Tarrant County, Texas, Probate Court No. 1, which became final by operation of law after 30 days.

(5) - On March 22, 1984, Judge Burnett

signed his "ORDER DISCHARGING SARRAINE KRAUSE (former Successor Administrator) and APPOINTING SUCCESSOR ADMINISTRATOR", Johnny W. Richards" II with bond at $8,000.00 (R.119). The application was also filed on March 22, 1984.(R.119)

(6) - On March 22, 1984, Sarraine Krause filed her Application for Payment of Administration Expenses of $3,891.97 of which $3,750.00 was for her attorney's fees, (R.113)and on 3-22-84, Judge Burnett signed his order approving same. (R.113)

(7) - (ON~ NO DATE OF SIGNING~ORDER by "BURNETT" (R.103) set hearing on March 22, 1984 also (ST/F - II) re: the lawfirms Application of JAN. 12, 1984.(R.109)

(8) - NO DATE OF SIGNING ORDER by "BURNETT" (R.121). The same refers to hearings on March 22, 1984 (ST/F - II) Re: The lawfirm's Application of 1-12-84 to Sell land at which testimony was taken. There are no exhibits of the two alleged tracts of land in Denton County, Tx. of 31.2 acres & 7.8 acres total of 39 acres,

alleged to belong to the estate, in the law-firm's application of 1-12-84 or in the ST/F-II. p.5, lines 6-21 (R. 109,Item #47)

(9) - June 18, 1984, Filed, "Richards" "MOTION FOR AUTHORITY TO SELL REAL PROPERTY" with Exhibit "A" contracts. (R.123,Item#38 (Note: "Richards'" June 18, 1984 Application was served only on Attorney Douglas R. Hudman who on 1-12-84 filed an"Application to Require Representative to Apply for Sale of Real Property" for his clients, the Law Firm of Brown, Herman, Scott, Dean, and Miles (R.109,Item #47)/ Judge Burnett signed his ORDER on July 18, 1984 (R.123,Item#37, APPENDIX "T"

(10) - October 19, 1984, "Richards" alledgedly sold some 39 acres - without any legal partition - to some friends & clients of his the AUBREY GROUP, made up of Savid J. McGilvray, Joseph R. Kilianski and Sharon L. Tolbert for about $80,000.00, Warranty Deed No.57214, Real Property Records, Denton Co., Texas, vol. 1511 pages 17-20

(11) - October 25, 1984, "Richards, II" filed his "FREEZE AGREEMENT" depositing in No. 301-4206 with the Allied Northeast Bank, National Ass'n., Fort Worth, Tx. $77,560.66. The balance of the $80,000.00 sale of the purported 39 acres without any legal partition of the "heir's" 225.1 acre farm to the AUBREY GROUP. (R.134,Item#34)Appendix "U"

(12) - The next step in the Probate Code ismissing (R.5). There is no "REPORT OF SALE" as required by V.A.T.S.,ProbC,Sect 353. Hence, that sale is absolutely void.GALLENMORE v. OWEN (Tex.Civ.App.1934) 69 SW2d 469 at 472; Art. 3302,R.S.1925; TEAGUE v. SWASEY, 46 TEX.CIV.APP. 151, 102S.W.458. Further "Richards" $8,000.00 bond was notincreased on a sale of land for about $80,000.00 net $77,560.66,V.A.T.S.,ProbC, 354.; CLAY v.FIELD (1885)115US 260,6 S.Ct. 36, 29 L.Ed. 375 at 376.

(13) - On NOV. 26, 1984, "Richards" filed his "APPLICATION FOR ORDER TO PAY CLAIMS" (R.135,Item#32/ORDER Item#33, DEC. 10, 1984

(14) - On FEB. 11, 1985, "Richards" filed, APPLICATION FOR PAYMENT OF FEES & COSTS

Successor Admin. "Richards'" own attorney fees. (R.161,Item#30) / ORDER of 2-20-85, "Richards" $2,400.00 in hisown attorney's fees(Item#31, R.161)

(15) - JAN. 25, 1985, FILED, $42,228.00

"AUTHENTICATED CLAIM OF JOHN R. LIVELY" (R.139,Item#28, ST/F - 2-8-85 with Exhibit "A" date, event, time ; ORDER to pay Lively

$41,684.00, Appendix "N"; $42,228.00 Claim, Appendix "Q"; ST/F - 2-8-85

(16) - OCT. 25, 1982, FILED, $ 8,840.00

"AUTHENTICATED CLAIM OF FLORENCE IONA CATLETT" for John R. Lively's attorneys fees((R.68A, Item#53) Which alleged claim was REJECTED IN FULL by the Administrator of Ernest's estate on NOV. 15, 1982 (R.68H,Item#54)

(17) - FEB. 20, 1985, from "Richards' record in No.77-2726-1 it appears that no authenticated claim was filed by Steven J. Williams, former attorney for Ernest's estate; however, ST/F was held on 2-20-85 in which he allegedly claim attorney fees of $5,172.48. (R.167,Item#29) was ORDERED paid to Williams by Judge Burnett, on MARCH 11, 1985

(18) - On OCT. 18, 1985, FILED,"Richards'" Annual Account of Successor Dependent Administrator covering his acts ? ?through October 15, 1985. Total Claims Paid $66,373.09 See Peggy Ramsey, Official Court Reporter,

Probate Court No. 1, Tarrant County, Tx., No. 77-2726-1, Peggy Ramsey's AFFIRMATION that no hearings were held on Annual Account of "Richards'" thru OCT. 15, 1985 covering the payment of some $66,373.09 out of Ernest's estate. Under Item IV. A) - Lively owes the estate $1,233.33 which Lively FAILED to mention as an "offset" in his 1-25-85 AUTHENTICATED CLAIM OF JOHN R. LIVELY (15) page 24 herein, Appendix "G", (R.139,Item#28)

(19) - On FEB. 13, 1986, FILED, Surveyor's, SCHOELL, FIELD & ASSOCIATES, INC. of Denton, Tx."MOTION and ORDER for Payment of CLAIM" for $3,178.17(R.183,Item#20) Also on 2-13-86 Judge Burnett Ordered (Appendix "S") "Richards'" to pay $3,178.17 to the surveyor within 10 days and he did. (Note: this was a survey made at Flo's attorney's request in her 12-3-81 PARTITION ACTION in Denton County, Tx. No.81-8158-B, 158th D. C. and in which Judge Narsutis' three (3) judgments were reversed & remanded on May 18, 1983 in the OPINION of the Court of Appeals, Ft. Worth,Appendix "L". Attention is called to the fact that the Exhibit "A" mentioned as incorporated in their purported claim against Ernest's Estate was not. "Lively wrote in his Claim(ST/F - 2-8-85 under Date: SEP. 21, 82, "Telephone conference with J. C. Green and letter Re: preparation of survey."

(20) - APR. 29, 1988, FILED, $8,473.23

"AUTHENTICATED CLAIM OF WINN,BEAUDRY & VIRDEN (R.207,Item#15) which lawfirm never worked for Ernest's Estate.(R.218,Item#14) Claim REJECTED IN FULL ($8,473.23) by Johnny W. Richards the Successor Administrator on MAY 18, 1988

Under Texas law, V.A.T.S.,ProbC.,Sect.313, 308, 310, ". . . unless claimant institutes suit on a rejected claim by representative of an estate within ninety days after rejection, his claim is barred - forever." RUSSEL v. DOBBS (1942) 63 TEX. 282, 354 SW2d 373.

(21) - FEB. 12, 1991, PAID, $7,561.14

WINN, BEAUDRY & VIRDEN by the Successor Administrator, Richards; ST/F - 2-12-91,VOL.I & II as will be noted under item (20) above Richards REJECTED IN FULL that lawfirms $8,473.23 on MAY 18, 1988; therefore, their sham & fraudulent claim is barred under Texas law.

Further, (ST/F - 2-12-91, VOL. II, Exh., R-6, fails to recite parts of V.A.T.S.,ProbC., Sect. 301 as required. For example, there is no mention of the "offset" of $8,649.04 paid paid by the "heir" personally to that lawfirm.

"An affidavit that fails to state any one of the facts required to be stated . . . is fatally defective . . . WALTERS v. PRESTIDGE, (1867) 30 TEX. 65."

SUMMATION OF THE STATEMENT

Your Petitioner, the "heir", brought this appeal from Judge Burnett's "final", "ORDER CLOSING ESTATE & . . ." (APPENDIX "J", p.20 (3) herein; R.276) signed , with,February lined out on AUG. 6, 1991. It was way back on FEB. 19, 1991, that "Richards" filed his "Application " of same (APPENDIX "K", p.19 (2) herein; R.274, Item #3). Then, on SEP. 4, 1991, the "heir" filed his "MOTION to "Set-Aside" Judge Burnett's 8-6-91 ORDER CLOSING ESTATE & DISCHARGING PERSONAL REPRESENTATIVE"(R.277,Item#2).

The "heir" brought this action against both of them for their breach of duty & responsibility as trustees to the beneficiary, the "heir", a citizen of Illinois, and for damages in excess of $600,000 in actual, punitive plus interest. And against Florence Iona Catlett ("FLO") for fraud and as the purported living co-tenant of a 5/6th interest (undivided) in the "heir's" grandfather's & grandmother's AUBREY, TEXAS FARM. "FLO'S" attorney is John R. Lively, who also made a sham, $42,228 claim against "Ernest's estate". (For more details,

see pages 2 thru 12 in the "heir'S" brief, Filed: FEB. 3, 1992 containing background facts, helpful in understanding this matter, being complex.

Simply put, this action is about the rape of an estate and its "heir" of Illinois.

a) - On 10-1-91, the Probate Clerk certified the receipt of cash deposit in lieu of bond on appeal. APP.R.PROC.,R.48(R.283)

b) - On 10-2-91, the "heir's" motion for appeal was perfected in No.2-91-213-CV(R.286)

c) - On 10-16-91, the "heir's" notice of documents to be included in the transcript was filed. (R.288) The delivery of a Statement of Facts (ST/F - 5-13-14-81) was mailed on 10-11-91 (R.298)

d) - On 10-22-91, the "heir's" Request for Statement of Facts (R.295). On 10-22-91, the "heir" filed Supplement to Request to include the docket sheets & court's minutes.(R.297)

e) - On 11-20-91, the "heir" Requested a Statement of Facts of No.81-8158-B, Denton Co., Tx. & to take Judicial Notice of the MAY 18, 1983 OPINION (APPENDIX "L")

f) - On 11-27-91, filed "Affirmation of Peggy Ramsey (R.301)(APPENDIX "I")

g) - On 12-3-91, the "heir" filed "Mot.for Ext. of Time to file transcript (R.302) & to take JUDICIAL NOTICE in No.81-8158-B)

h) - On 12-9-91, ORDER, GRANTED, Mot. to Ext. Time to file transcript to 1-6-92(APPENDIX "H") but DENIED to include as a part of this case ST?F in No.81-8158-B, DentonCo.,Tx., 158th D.C., which is "FLO'S" partition action. On MAY 18, 1983, the Ft. Worth Appellate Court signed their OPINION in No.2-82-212-CV which REVERSED & REMANDED Judge Narsutis' three

judgments of OCT. 4-4-14-82 & with all costs against "FLO"(APPENDIX "L") plus the same appellate court refused to take JUDICIAL NOTICE of their own unpublished OPINION of MAY 18, 1983. (APPENDIX "L"; R.302)

(i) - On 12-20-91, the "heir" filed his Exception to Part of that Court's ORDER of 12-9-91. h) above.

j) - On 12-31-91, ORDER, OVERRULED the "heir's" Exceptions (APPENDIX "G")

k) - On JAN. 3, 1992, the transcript was filed by Probate CourtClerk (R.1)

l) - On FEB. 7, 1992, Lively filed "FLO'S" "Motion to STRIKE appellant's Brief & for Damages" (same filed 4 days late). which is null & void because a motion to STRIKE the whole pleadings is in effect a general demurrer. CITY of BROWNVILLE v. GALVAN, 139 TEX. 128, 162 SW2d 98 at 99-100 (TEX.SUP.CT. 1942), where that TEXAS SUPREME COURT said: "The use of a general demurrer has been eliminated from Texas proctice, and abolished in Texas., TEX.R.CIV.PROC.,R. 90; BANKERS v. JEFFERSON COUNTY, NO. ONE, 277 SW2d 130 (Tex.Civ.App. 1950), n.w.h. Therefore, "FLO'S" motion to strike is null & void, as is Justice Day's FEB. 25, 1992 OPINION & JUDGMENT (APPENDIX "E"); since he based his OPINION on that null & void motion of "FLO'S (FEB. 7, 1992) Justice Day was without authority, COMET ALUM-

INUM COMPANY v. JUDGE DIRBEL, (TEX.SUP.CT. 1970) 450 SW2d 56 at 59, where the Texas Supreme Court said: ". . . Therefore, the nunc pro tunc judgment of 3-3-69, purporting to eliminate the item as clerical error was void; and the subsequent judgment of 3-28-69 granting Levine a new trial is likewise void. (Emphasis Added)."

m) - Further, on FEB. 7, 1992, Lively also filed "Flo's" "Motion to Dismiss for want of Jurisdiction" pursuant to Rules 60(a) & 72, TEX. R.APP.PROC.; also (4 days late). (R.1) The transcript was filed JAN. 3, 1992, k) above

Further, Lively's appearance before the Appellate Clerk to file "Flo's" two motions on FEB. 7, 1992 cured any alleged personal Jurisdictional problem with "FLO". YORK v. STATE of TEXAS, (1890) 137 US 15 at p.16, 34 L.Ed.604, at p. 605, 11 St. Ct. 9. (Lively never asked for an extension of time in that regard.

n) - On 2-18-92, ORDER to Ext. Time to File a Response to Appellee's Motion to Strike GRANTED IN PART, Appellant's responses due 2-28-92 . . . (APPENDIX "F"

o) - On FEB. 25, 1992, Justice Day without any date of signing, as such, OPINION & JUDGMENT rendered (STAMPED DATE) (APPENDIX "E"

p) - On FEB. 21, 1992, Tim Curry, Criminal District Attorney of Tarrant County, Texas filed Judge Burnett's (19 day late) "Motion to Join in Motion and to Adopt Brief's of "FLO'S"

Further, Tim Curry's appearance before the APPELLATE CLERK to file Judge Burnett's motion cured any alleged personal Jurisdictional problem of Judge Burnett. YORK v. STATE of TEXAS,

137 US 15 at p.16, 34 L.Ed. 604 at p.605, 11 S.Ct. 9; TEX.R.CIV.P.,Rule 121.

q) - On 3-16-92, ORDER, DENIED the "heir's motion for leave to have his two motions mailed FEB. 26th & 27th, 1992 considered as a motion for rehearing. (APPENDIX "D"

r) - On 3-23-92, the "heir" filed his Mot. for Ext. of Time for the "heir" to file his Motion for Rehearing"."

s) - On 3-26-92, ORDER, GRANTING the "heir's Motion for Time to file his Motion for Rehearing to APR. 13, 1992 (APPENDIX "C"

t) - On 4-13-92, the "heir" filed his Motion for Rehearing."

u) - On 4-22-92, ORDER, OVERRULING . . . the "heir's" Motion for Rehearing, OPINION & JUDGMENT of FEB. 25, 1992 stands unchanged. (APPENDIX "B.1"

v) - On MAY 21, 1992, the "heir" filed his "APPLICATION for WRIT of ERROR in the SUPREME COURT of TEXAS."

w) - On JUN. 24, 1992, the SUPREME COURT of TEXAS denied in No.D-2437, Application for writ of error with thenotion, "writ denied". (APPENDIX "B"

x) - On SEP. 9, 1992, the SUPREME COURT of TEXAS overruled petitioner's motion for rehearing of appelication for writ of error in No.D-2437. (APPENDIX "A"

See, WILLIAMSON v. BERRY, 1850, 8 How. 495, 12 L.ed. 1170 at p.1189 where the U. S. Supreme Court said: "But it is equally settled rule in Jurisprudence, that the jurisdiction of any court exercising authority over a subject may be inquired into in every other court, when the proceedings in the former are relied upon and brought before the later, by a party claiming the benefit of such proceedings."

REASONS FOR GRANTING THE WRIT

Certiorari should be granted for the following reasons:

FIRST: Since, the 5th Amendment of the U. S. Constitution states: " . . . that no person shall be deprived of life, liberty or property without due process of law and the 14th Amendment states: " Sect. 1, Due Process of Law . . . nor shall any state deprive any person of life, liberty, or property, without due process of law.", the instant question is, did the State of Texas through its appointed or elected officials, Judge Robert M. Burnett, Probate Court Number One, Tarrant County, Texas and Johnny W. Richards, II, the duly appointed and sworn, Successor Administrator of the Estate ofErnest Luther Catlett, Deceased in No.77-2726-1 byappointment on March 22, 1984 (R.119,Item$41) did make his "MOTION FOR AUTHORITY TO SELL REAL PROPERTY" on June 18, 1984 (R.123,Item#38), approved on July 18, 1984 by Judge Burnett, to sell some alleged 39 acres of land purported to belong

to the Estate of Ernest on October 19, 1984 and he did sell that land to some clients, without any "notice" or "hearing" to the real owner, "the heir", M. Wiley Catlett, a citizen of the State of Illinois (R.134,Item#34); hence, did they divest "the heir" of the title which vested in "the heir" at the intestate's death; thereby, depriving "the heir" of his property without "due process of law" in violation of the 5th and 14th Amendments of the Federal Constitution?

Arguments: (a) - "Wiley" is the heir of decendent Ernest Luther Catlett, Deceased; therefore, he is an interested & necessary & indispensable party in Ernest's estate, V.A.T.S., ProbC.,Sects. 3(o) & 3(r).

"Title to property is not suspended on the death of the owner. The law effects the devolution to the heirs at law, and that devolution takes place instantly on the intestate's death, and once the estate vests in the heir it is not within the power of the legislature to distrub his rights therein." V.A.T.S.,ProbC.,Sect.37.

In Texas, the heirs are the real owners of the real property upon the death of their ancestor; BRUNSON v. BRUNSON, 1963,(CA 7th Dist)

372 SW2d 761,writ,dism.w.o.j.; Whether property passes under will or by descent & distribution, title vest immediately on the death of owner, and there is never a time when title is not vested in somebody, ZAHN v. NATIONAL BANK OF COMMERCE (1959,CA Dist.) 328 SW2d 783, writ,ref.n.r.e.; KITTREDGE v. RACE, 1875, U.S.Supreme Ct., 92 US 116, 23 L.Ed. 488, 490."

Further see, the April 22, 1986, "JUDGMENT DECLARING HEIRSHIP/APPROVED (R.193); V.A.T.S. ProbC.,Sects 49 & 50. It is important to note herein that the "heir" was never notified of any such proceedings and they were not in accordance with Texas law (R.193). Also in this connection see, Item #7 of "Richards" ACCOUNT FOR FINAL SETTLEMENT, FILED, July 17, 1990(R.241).

The Certifications or Proofs of Service on the following "APPLICATIONS" clearly shows that neither Johnny W. Richards, II, Successor Dependent Administrator, nor former Successor Administratrix, Sarraine S. Krause, nor the attorney, Douglas R. Hudman for the lawfirm of Brown, Herman, Scott, Dean & Miles "notified" "the heir", M. Wiley Catlett of the State of Illinois of those "APPLICATIONS" filed:

(1) - FILED: 1-24-84, "APPLICATION TO REQUIRE REPRESENTATIVE TO APPLY FOR SALE OF REAL PROPERTY" (R.109,Item#47)

(2) - FILED, 3-22-84, "APPLICATION FOR PAYMENT OF EXPENSES OF ADMINISTRATION" (R.113,Item#44/ ORDER

(3) - FILED, 3-22-84, "APPLICATION TO DISCHARGE PERSONAL REPRESENTATIVE AND APPOINT A SUCCESSOR ADMINISTRATOR"(R.119,Item#42/ORDER

(4) - FILED, 6-18-84, "MOTION FOR AUTHORITY TO SELL REAL PROPERTY" (R.123,Item#38),ORDER APPROVED, 7-18-84; APPENDIX "T"

(5) - FILED, 11-26-84, "APPLICATION FOR ORDER TO PAY CLAIMS" (R.135,Item#33), ORDER(R.135, Item#32), FILED, 12-10-84

(6) - FILED, 10-19-84, DEED No.57214,vol1511, pages 17-20, real property records, Denton Co., Tx., Johnny W. Richards, II, Successor Admin. - SOLD - some alleged 39 acres of land out of the 225.1 acres of "the heir's" grandfather's and grandmother's AUBREY, TEXAS FARM purported to belong to Ernest's Estate which he sold to the AUBREY GROUP; made up of Sharon L. Tolbert, David J. McGilvray & Joseph R. Kilianski for a net of $77,560.66

(7) - FILED, 10-25-84, FREEZE AGREEMENT, "Richards" deposited $77,560.66 in the Allied Northeast Bank.(R.134,Item#34, APPENDIX "U"

"RICHARDS'" DISCRIMINATES AGAINST "the HEIR"

For proof, see "Richards" own "APPLICATION BY SUCCESSOR ADMINISTRATOR FOR PAYMENT OF FEES AND COSTS" filed FEB. 11, 1985 (R.161,Item#31) including ten conferences. Non included "the heir", the real owner of that land.

3-15-84 - conference with Krause
3-15-84 - conference with Judge Burnett
5-30-84 - conference with Sharon Tolbert
7-11-84 - conference with Tolbert
7-17-84 - conference with Mary Lyday
7-27-84 - conference with Tolbert
10-10-84 - conference with Elaine
1-11-85 - conference with Judge Burnett
1-17-85 - conference with Judge Burnett
1-25-85 - conference with John R. Lively, (Flo's) attorney

Further, during that same period "Richards" own records (R.161,Item#31/Order#30) shows that he had about 58 phone conversations with various persons; however, not once did he "notify" the real owner of that land, "the Heir". MANSELL v. SAUNDERS (CA5th - 1967) 372 F2d 573 at 576 "Considering this delaying tactic, the fact of notice to every garbage operator except Mansell . . ."

"It is elementary that title to the land belonging to a decedent does not VEST in the administrator, but in the heir." JONES v. GILLIAN (Tex.Civ.App.1918) 199 SW2d 694, 698; V.A.T.S.,ProbC.,Sect. 37.

Successor Administrator, Richards and Judge Robert M. Burnett and Attorney John R. Lively for "Flo" and the others involved in that conspiracy to defraud, knew well where the "heir" was located in Highland Park, Ill. "The touchstone of due process is protection

of the individual against arbitrary action of government." WOLFF v. McDONNELL (1974) 418 US 539, 43 L.Ed.2d 935, 94 S.Ct. 2963 at 952; MULLANE v. CENTRAL HANOVER TR. CO. 339 US 306 at 313, 94 L.Ed 865 at 872, 70 S.Ct. 652; READ v. GEE (Tex.Civ.App. Ft. Worth 1977) 551 SW2d 496 at 498 where Chief Justice Massey, held that judgment order would be reversed for want of due process of law in proceedings at which it was rendered." U.S.C.A.Const. Amends. 5, 14; Vernon's Ann.St.Const.,art. 1, Sect. 19 , RNRE

"A court of probate in ordering a sale of any real estate of a desceased person, is exercising a special statutory power and not any that pertains to the ordinary settlement of the estate."

See on p.714, where the SUPREME COURT OF OKLAHOMA said: "Since a sale of realestate by an administrator divests the heir of the title which vested in them at the intestate's death, an order for such sale can only be made after notice to the heir's, otherwise, the property would be taken without due process of law and therefore . . . is absolutely void, and deprives them of due process of law in violation of the Fourteenth Amendment to the Federal Constitution. SEAL v. BARNES (OKLA.SUP.CT. 1934) 168 OKLA 550, 35 P2d 704 at 713 & 714.

See also ARMSTRONG v. MANZO, 380 US 545, 14 L.Ed.2d 62, 85 S.Ct. 1187 A divorce case

from El Paso County, Texas where no notice of the pendency of the proceedings was given to the divorced father of the child, although the parties initiating the adoption well knew his precise whereabouts.

On certiorari, the SUPREME COURT OF THE UNITED STATES reversed.

"A fundamental requirement of due process is 'the opportunity to be heard.'"

"An elemental and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all circumstances to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections."

Hence, in the instant case, the State of Texas through its Probate System in which "Richards" and Judge Burnett did sell 39 acres of land which vested in the "heir" at his father's death did divest the "heir" of his property without any "notice" or "hearing" to the "heir"; thereby, taking his land and depriving the "heir" of due process of law in violation of the 5th and 14th Amendments of the Federal Constitution and rendered the decree constitutionally invalid. ARMSTRONG v. MANZO, 380 US 545,14 L.Ed2d 62, 85 S.Ct.1187.

SECOND REASON: In Texas, "The Court administers the estate, not the Administrator." and there is a special confidential and fiduciary relationship between the Probate Court Judge, "Burnett", who really administers the

estate MURPHY v. CARTWRIGHT (CA5 TEX. 1953) 202 F2d 71 at p. 73". . . As executor of the estate, appellee occupied a position of trust to all parties having an interest in the estate.

Because of his confidential & fiducial relationship to appellant he owed her the highest degree of fidelity. STRATES v. DIMOTSIS (CA5) 110 F2d 374 . . . The law will not permit him to take advantage of those whom he represents. THAW v. THAW, 2nd Cir. 27 F2d 729; . . . "

and its sole "heir"; hence, the question is: Can Probate Court Judge Burnett, who outside of his immunity be held accountable under law where he threatened the "heir" by saying: "I'll SEE THAT YOU DON't get anything from your father's estate." ; and where Judge Burnett with the assistance of "Richards" and others, in collusion, Judge Burnett carried out that threat, made outside of his immunity?

It was on August 19, 1982, after the hearings were finished on Attorney Williams,

"Motion to Withdraw as Counsel in Ernest's estate" and at a time when the estate had a Writ of Error before The Supreme Court of Texas, which was outside of Judge Burnett's immunity, that Judge Burnett threatened the "heir" an Illinois citizen by saying: "I'll see that you don't get anything from your father's estate." With the assistance of "Richards" and others in collusion Judge Burnett carried out that threat.

The "heir" never even got that $30.30 shown in "Richards" "APPLICATION TO CLOSE ESTATE & TO DISCHARGE PERSONAL REPRESNTATIVE" (R274).

Petitioner, the "heir", will show this Court a few facts contained in his SEPT. 4, 1991 "Motion to "Set-Aside Judge Burnett's AUG. 6, 1991 ORDER CLOSING ESTATE . . ." which proves that "Richards" with the approval of Judge Burnett did practice a pattern of waste and of the squandering and the payment of sham claims in the "heir's" father's estate:(R.277)

See, Item #2., On FEB. 12, 1991 the Trial Court ORDERED "Richards" to pay the law firm of Winn, Beaudry & Virden $7,561.14 with the unfounded reason that they were former attorneys for M. Wiley Catlett.

a) - That firm never had a contract or worked for Ernest's estate; therefore, that firm had no standing to even bring a claim.V.A.T.S. ProbC.,Sect.3(r);

b) - However, on @ April 29, 1988 that firm filed a claim for $8,473.23 against Ernest's estate with "Richards";

c) - On MAY 12, 1988, "Richards" REJECTED their, 4-29-88, purported claim of $8,473.23; hence, Judge Burnett had NO AUTHORITY to order "Richards" on FEB. 12, 1991 to pay Winn, Beaudry & Virden $7,561.14, Probate Code only gives the Probate Court the right to hear approved claims, V.A.T.S.,ProbC.,Sect.313 which says that unless a claimant institutes suit on a claim rejected by the representative of an estate within 90 days after the rejection, his claim is barred. 18 TEX.JUR2d,Sect.639. The terms of the statute are mandatory. ASKEY v. POWER (CA)21 SW2d 326, revd. on other grounds 36 SW2d 446.(R.218)

d) - Since that law firm never filed a suit on their REJECTED claim of $8,473.23 within 90-days; their claim is barred forever; V.A.T.S.,ProbC.,Sect. 313; hence Judge Burnett's ORDER of 8-6-91 is a nullity and void.(R.276) (R.274, ST/F -V) See also pp. 27-28 in "heir's" brief - See also "Richards" application of 2-19-91 where Winn, Beaudry & Virden agreed to take $7,561.14 so that "Richards" could be paid another $1,000.00 more.(R.274,R.276)

e) - Further, M. Wiley Catlett, the "heir" paid to Winn, Beaudry & Virden $8,649.04 out of his own funds and he has the cancelled checks to prove it. Further, since that sum of $8,649.04 was not included as an "offset" as required by law in authenticated claims against the estate; hence, the same is null & void.

An affidavit that fails to state any one of the facts required to be stated by,V.A.T.S., ProbC.,Sect.301 is fatally defective.WALTERS v. PRESTIDGE (1867)30 TEX. 65; SMALL v. SMALL (Tex.Civ.App.1968) 434 SW2d 940,ref.n.r.e.

For another example of waste & the squand - ering & of a sham claim, see the alleged, "AUTHENTICATED CLAIM OF JOHN R. LIVELY" for $42,228.00 filed improperly "against this estate" not against the personal representative of the estate as required in Texas law. FILED on JAN. 25, 1985 (R.139,APPENDIX "Q") and on FEB. 8, 1985, "Richards" (R.168, APPENDIX "R") paid Lively $41,684.00, approved.

a) - Lively filed that purported claim against "this estate"(Not a legal entity)PRICE v. ANDERSON (1975 TEX.) 552 SW2d 690 at 691.

b) - The "heir" was not "noticed" on Lively's sham claim of $42,228.00; hence, violating the "heir's rights & priviledges under the 5th & 14th Amends. of the U. S. Constitution.

c) - Lively worked as attorney for "Flo" the adverse party, not for Ernest's estate. Further, Lively failed to include $1,233.33 as an "offset" in his purported claim which Lively owed Ernest's estate.

d) - On DEC. 16, 1980, Lively wrote to Broiles (former attorney for the estate) (R.31,Item#58), see page 1, where he states: ""As you can tell, the judgment does <u>not</u> recite the legal description at this point." So, Lively, knowingly put those insufficient description in all of those documents, orders & judgments in QUESTION "V", herein.

On NOV. 15, 1982, the Administrator filed his REJECTION in full with reasons.(R.68H,) on OCT. 25, 82(16)p.24 herein "Flo's"/claim. Lively didn't have any contract or judgment against "this estate" and he knew it when he filed that purported claim on 1-25-85 for $42,228.00. Lively was never a party in any of the proceedings. He is the attorney for "Flo" the purported living co-tenant of a 5/6th interest in the "heir's" grandfather's farm. As stated under item c) herein, Lively failed to include the $1,233.33 which he owed for "Flo" as an "offset" in his affidavit.

Therefore, his purported claim of 1-25-85 is fatally defective. WHITMIRE v. POWELL (Tex.Civ.App.1909) 117 S.W.438; WALTERS v. PRESTIDGE (1867) 30 TEX. 65.

There are the further examples of waste& squandering & sham claims paid by "Richards" with the approval of Judge "Burnett", such as: On FEB. 13, 1986, Surveyor's SCHOELL, FIELD & ASSOCIATES, INC. of Denton, Texas filed a $3,178.17 claim for their services in Probate Court No. 1, Tarrant Co., Tx., APPENDIX "S", and in No.81-8158-B, Denton Co., Tx.,APPENDIX

"V" , $2,043.75 , survey and $1,134.42 interest at 18% per year, total, $3,178.17 also. That survey was contracted for by "Flo's" attorney as proven by his own words in his JAN. 25, 85 claim for $42,228.00, Exhibit "1" therein. It was Lively who contacted and wrote to the surveyor, J. C. Green; date: SEP. 21, 82, "Telephone conference with J. C. Green and letter re: prepartion of survey". Hence, it was Lively who actually hired the surveyor's for the commissioners on Judge Narsutis' reversed & remanded three (3) judgments of OCT. 4-4-14-82, COURT of APPEALS, No.2-82-212-CV(81-8158-B below) Denton Co., Tx. unpublished, APPENDIX "L". Unauthenticated claim filed against estate is void,V.A.T.S.,ProbC.,Sect. 301. MAY 18, 1983 is the date of that OPINION.

This is a clear example of fraud against Ernest's estate and it "heir", M. Wiley Catlett.

CARTWRIGHT v. MINTON (Tex.Civ.App.1958) 318 SW2d 449 RNRE, at 454, "The same public policy that in general sanctions the avoidance of a promice obtained by deceit strikes down all attempts to circumvent that policy by means of contractual devices. BATES v. SOUTHGATE, 308 Mass.170, 31 N.E.2d 551,558, 133 ALR 1349, quoted

quoted with approval by our Texas Supreme Court in Dallas Farm Machinery Co. v. REAVES, TEX., 307 SW2d 233."

On March 11, 1985, Judge Burnett signed his OR DER to pay attorney Steven J. Williams, $5,172.48 in fees without any application from "Richards" (R.167,Item#29)(ST/F-2-20-85).

Further, the "heir" finds no authenticated claim for attorney Williams' purported claim in the file of his father's estate for that $5,172.48 paid to Williams on FEB. 20, 1985 (R.168,Item#26). Hence, the law of Texas states: "Unauthenticated claim filed against estate is void. V.A.T.S.,ProbC.,Sect. 301, CLAIMS MUST BE AUTHENTICATED.

Further, Williams' Exhibits(ST/F -2-20-85) are not understandable. There is no "offseT" for the $10,830.17 which the "heir" paid to Steven J. Williams out of the "heir's" own personal funds.

"A judgment of probate court authorizing payments (R.167,Item#29) of claim which had not been presented to estate or rejected by administrator of estate was void. CLEMENTS v. CHAJKOWSKI (1948) 146 TEX. 408, 208 SW2d 841; V.A.T.S.,ProbC.,Sect. 298. Claims Against Estate of Decedents and Wards.

Judge Burnett is a necessary party, not only, because of his threat against the "heir", but because, in Texas, he really administers the estate. JONES v. GILLHAM (TEX.SUP.CT.1919) 212 SW 930, where the Texas Supreme Court said: "The Court administers the estate, not the administrator."

Judge Burnett had the power to restrain "Richards"; however, he failed to do his duty to the "heir". Such principles are not new. As early as 1873, in COOK ADM. v. CARSON & LEWIS, 38 TEX. 284, on page 287 the TEXAS SUPREME COURT HELD:

"An administrator, no more than an individual acting for himself, will be allowed to pursue such a course in the management of the trust in his hands as to do gross injustice to other parties. Our laws regulating the settlement of the estate of deceased persons will allow no such thing, much less do they require it."

In Corpus Juris Secundum, Executors & Administrators, vol.33, H. WASTE, CONVERSION OR EMBEZZLEMENT OF ASSETS, Sect. 242, see:

"An executor or administrator is personally liable for waste, or conversion or similar loss to the estate, in some instances even where the misconduct is that of a third person; and a third person may be liable for the misconduct of the representative, where such third person knowingly accuired the property or participated in the misconduct.

"An executor or administrator is personally liable to those who are interested in the estate as heirs . . . for waste, or for conversion, misapplication or embezzlement of the assets of the estate."

and on page 1250, Sect. 243. Waste

"Waste is any mismanagement of the estate of a decedent, or other breach of duty, resulting in loss, by an executor or administrator. In a proper case a representative may be restrained from committing waste."

Judge Burnett failed to restrain "Richards"

Successor Administrator, "Richards" retained himself, J. W. Richards, attorney and paid himself a total of $8,275.00 in fees as follows:

$1,000	- Paid on FEB. 19, 1991(R.274)
4,875	- Paid on MAY 1, 1989 (R.227)
2,400	- Paid on FEB. 20, 1985 (R.161)
$8,275	Total attorneys fees paid to himself

The general rule is that where a lawyer becomes executor or administrator, his compensation as such is in full for his services, although he exercises his professional skill therein; and even if he performs duties he might have hired an attorney to perform, he is not entitled to attorney's fees.

This rule is one of public policy, grounded upon the principle that a trustee shall not place himself in situation where his interests

conflict with his duty as fiduciary. 21 Am.Jur. - Executors & Administrators, Section 532, Sect. 2 Summary; Re: Parker's Estate (1926) 200 Cal. 132, 251 P 907; 49 A.L.R. 1025; In Re: Hallenback's Estate (U.S.Dist.Ct.,Dist. of Col.1954) 122 F.Supp. 212 at 213"

In a leading case, MAGRUDER v. DURY, 1914, 225 US 106, 119, 35 S.Ct. 77, 82, 59 L.Ed. 151, arising in the jurisdiction the rule is well stated that "a trustee (executrix) can make no profit of his trust."

The rule in such cases springs from his duty to protect the interests of the estate, and not to permit hispersonal interest to in any wise conflict with his duty in that respect.

The intention is to provide against any possible selfish interest exercising an influence which can interfere with the faithful discharge of the duty which is owing in a fiduciary capacity."

THIRD REASON: Tim Curry is the Criminal District Attorney of Tarrant County, Texas; therefore, the question is, does he have the right under law to represent Judge Burnett, the Probate Judge in Court No. 1, Tarrant County, Texas, who is charged with extrinsic fraud in this action; does Tim Curry have a conflict of interest ?

FOURTH REASON: Does Judge Burnett and "Richards" have the authority to sell some purported 39 acres of land out of the "heir's" grandfather's & grandmother's 225.1 acre AUBREY, TEXAS FARM, where there has been no "legal partition" between the estate and the purported living co-tenant, Florence Iona, John R. Lively's client?

On MAY 18, 1983, the Fort Worth,Tx. Appellate Court rendered their OPINION in No.2-82-212-CV(#81-8158-B below) in "Flo's" partition action filed, DEC. 3, 1981. They REVERSED and REMANDED all three Judge Narsutis OCT. 4-4-14-82 Judgments against "Flo" with all costs, $884.00. (APPENDIX "L") Hence, to date, there has been no "legal partition" between Ernest's estate and the living co-tenant, "Flo".

In the instant case, the Probate Court has no power to partition that farm."Probate Court is without jurisdiction to partition land jointly owned by decedent and living co-tenant, inasmuch as cotenant's interest was never part of decedent's estate." PEMBERTON v. LEATHERWOOD (CA) 219 SW2d 490, reh.den.err ref.

That is exactly the situtation in the instant case between "FLO" and the estate.

(RS art.6083, 6082, 6101(NOW: V.T.C.A., Property Code,Sect. 23.001)PARTITION JOHNSON v. COLT (CA) 48 SW2d 397.

The SUPREME COURT of TEXAS said: . . . . "The power to try title to land is confided by article V., section 8, of our constitution, Vernon's Ann. St., in the district court in the following words: "The District Court shall have * * * * jurisdiction * * * * of all suits for trial of title to land* * * * ," The power to try title to land is comprehended by the provision of section 16 of the same article of the constitution which provides that the county court shall not have jurisdiction of suits for the recovery of land". FARLEY v. DORSEY,(TEX.COMM'N.SECT. "A" 1940) 135 SW2d 89 at p.90.

Hence, the Probate Court has no jurisdiction to partition land in Denton County, Tex purportedly held undivided interests between the estate and a living cotenant, "FLO". Therefore, Probate Court Judge Burnett and "Richards" have no authority to sell that alleged 39 acres.

"A judgment is rendered <u>void</u>, not only by lack of jurisdiction over parties or subject-matter, but by the court's lack of authority to award particular relief which the judgment undertakes to grant, and judgment so entered is subject to a collateral attack". SMITH v. PASCHAL (TEX. COMM'N.SECT."A" 1928) 1 SW2d 1086; ELLIOTT v. PEIRSOL, 1828, 1 Pet 328, 7 L.Ed. 164 at 170, "But if it act without authority, its judgments and orders are nullities, they are not voidable, but simply void, and form no bar to a recovery sought, even prior to a reversal. . ."

FIFTH REASON: Deals with the insufficient descriptions (See APPENDIX "M", App.22,23,24 & 25) of the land contained in the orders and judgments. (A); (B); (C), etc. mentioned on p. iv, herein; raising the important question as whether they are consequentially, null & void?

First, all of those description were prepared for the various judges by Florence Iona Catlett's attorney, John R. Lively; which decriptions the "heir" , all along has maintained are insufficient; even giving testimony to that effect in the 236th D. C., Tarrant County, Tx. on August 27, 1981, Cause No.236-39718-76.

Second, Judge Burnett, Probate Court No.1, knew going in that there was a problem with those descriptions from "Lively's" letter of 12-16-80 to attorney Broiles for Plaintiff(R. 31) and Broiles' letter of 12-17-80 to Judge Burnett enclosing Plaintiff's "MOTION to APPROVE SETTLEMENT, FILED: 12-22-80(R.33 & 34)

Lively, in his letter of 12-16-80(R.31) to Broiles for the estate stated: "I have talked with Mr. Trickey(another attorney) regarding the discrepancy in the acreage, and

it appears to me that we are unable to explain it in terms of legal conveyances., p.2,par.2, (R.31). A judgment which contains a defective property description is void and the Sheriff's deed executed in carrying out such judgment is likewise void. GREER v. GREER, 191 SW2d 848 (TEX.1946); In MAUPIN v. CHANEY (SUP.CT.TEX. 1942) 139 TEX. 426, 163 SW2d 380 at p.431 the TEXAS SUPREME COURT said: "in other words, if there appears in the instrument enough to enable oneby pursuing an inquirey based upon the information contained in the deed to itentify the particular property to the exclusion of others, the description will be held sufficient.

In the instant case, that cannot be done because part of that FIFTH TRACT description WAS SOLD to J. G. Powledge in 4-14-1884 by James L. Catlett & wife. deed records, Denton County, Tx.,vol.29,page 9 @ 28 acres. A correct list of all the land which James L. Catlett & wife bought and sold during their lifetimes will be later in this petition which proves that the descriptions which "Lively" put into all of those instruments are null and void. (APPENDIX "M",App.22,23,24,&25.; p.7 in Writ of Error.)

The quantity figures in "LIVELY'S" descriptions, APPENDIX "M", totals 253.10 acres; yet about 28 acres were SOLD as stated leaving

a balance of 225.1 acres which coresponds to the Real Estate Tax records in Denton County, Tx. The issue of mutual mistake is not involved here. Therefore, the deeds must stand or fall by the descriptions contained in the deed from Smith and wife to Busby."SMITH v. SORELLE (TEX.SUP.CT. 1935) 87 SW2d 703 at 705.

Further, "In the case of NORRIS v. HUNT, 51 TEX. 609, in discussing thesufficiency of the description of land contained in an instrument in order to be valid, the court said:
"It is said by Chief Justice Marshall, in CHINOWETH v. HASKELL, 3 Pet (92), 96(7 L.Ed. 614), that 'It is an obvious principle that a grant must describe the land to be conveyed, and that the subject granted must be identified by the description given of it in the instrument itself."

The FIFTH TRACT measurements by metes & bounds are 1179 varas X 339 4/10 varas (APPENDIX "M",App.24 &25) totaling 70.779 acres. Yet, the quantity figure is only 50 acres in Livelys descriptions - clearly error in Lively's descriptions. THOMPSON v. BRACKEN(Tex.Civ.App.Dallas 1936) 93 SW2d 614 at 616, ref.n.r.e.; DALTON v. RUST, 22 TEX. (133)134; HATCH v. De la Garza's Ex'r. 22 TEX. 176

The construction of property descriptions in deeds is a question of law. Haines v. McLean 154 TEX., 272 SW2d 777 reh.den.; COX v. HUNT, 145 US 376, 36 L.Ed. 741, 12 S.Ct. 962.

Further, the TEXAS SUPREME COURT in SMALL V. MORRIS (1953) 255 SW2d 174 at 174, " . . . were insufficient to locate the property on the ground and were not cured by reference in petition to deed."

JAMES L. CATLETT & WIFE'S DEEDS & PATENT

Following is a list of five (5) deeds & a patent of the land owned & sold by the Heir's grandmother & grandfather obtained from Tim Hodges, County Clerk, Denton County, Texas - (Sealed & Certified)

	QUANTITY in ACRES
FIRST TRACT: 8-3-1893,DEED RECORDS, Denton Co.,Tx.,Book 67,p.172 - J.T. Robinson & wife to J. L. Catlett	@ 80.00
SECOND TRACT: 11-11-1881,Original Patent RECORDS, Denton Co.,Tx., vol. "B",page 44,Patent#294, J.L.Catlett	14.60
THIRD TRACT: 11-27-1884,DEED RECORDS Denton Co.,Tx.,Vol.31,pages 566,567- T.B.Cagle & wife to J.L.Catlett	54.50
FOURTH TRACT: 11-12-1880,DEED RECORDS Denton Co.,Tx.,vol. "P",pages 550 & 551-J.G.Loudder &wife to JAMES Catlett	54.00
FIFTH TRACT: 10-19-1883,DEED RECORDS, Denton Co.,Tx.,vol."Y",page 50 - A.E. Looper & wife to James Catlett	50.00
TOTAL acres in quantity	@ 253.10
PART of FIFTH TRACT: 4-14-1884, DEED RECORDS, Denton Co.,Tx.,vol.29,page 9 - James L.Catlett & wife SOLD to J.G.Powledge	@ 28.00
NET acres owned by James L.Catlett & wife at their deaths	225.10

Further, using "Lively's metes & bounds measurements (1179 varas X 339 4/10 varas, which are controlling) of 70.779 acres for the FIFTH TRACT the total for the five tracts is 273.879 acres Not 225.1 acres which James L. Catlett owned at his death on DEC. 12, 1928.

SIXTH REASON:

EVIDENCE SHOWS THAT:
ERNEST LUTHER CATLETT INHERITED
100% OF THE AUBREY, TEXAS FARM

The "Heir" has stated, all along that he believed that his father (Ernest) inherited 100% of his grandfather's and grandmother's Aubrey, Texas farm under the laws of descent & distribution - Ernest was the last survivor - or through a construction of the second provision of Charlie Catlett's will (R.27).

1. (a) - Charlie (C.E.) Catlett, Testator, died 8-26-74
   (b) - Pharon C. (S.C., Sam) Catlett, died 9-19-75
   (c) - Ernest Luther Catlett, died 6-1-77

2. The first sentence (10 lines) of that SECOND PROVISION of Charlie's will reads:

"SECOND: I give and bequeath to my brother ERNEST LUTHER CATLETT, for and during his natural life all of my property, real, personal & mixed, he the said ERNEST LUTHER CATLETT to have the use and benefit of all of my lands, particularly those located in Denton County, Texas, to have the installment payments of principal on the Vendor's Lien Note due from R. E. CLARK, JR., together with interest thereon as it accrues during his natural life, and at his death all of said lands and other property shall vest in my brother, PHARON CRAWFORD CATLETT, who now lives in the County of Tarrant, Texas."

3. Ernest was the sole surviving son; Pharon

having predeceased Ernest.

In 1977, the TEXAS SUPREME COURT in FROST NAT. BANK of SAN ANTONIO v. NEWTON, 554 SW2d 149 at 153 stated: " . . . Therefore, the true meaning of the will must be determined by construing the language used within the four corners of the instrument." REPUBLIC NAT BANK of DALLAS v. FREDERICKS, (TEX.SUP.CT. 1955) 283 SW2d 39, 155 TEX. 79.

4. First, Charlie's will (R.27) in that sentence (10 lines long) of the SECOND provision made survival of the remainderman, Pharon C., a condition precedent to the vesting of the remainder. Pharon must survive the first-taker Ernest. A fact which he did not do, he died on 9-19-75 whereas, Ernest died on 6-1-77.

5. The conditional element is incorporated into the description of, or into the gift to the remainderman, therefore, Pharon's remainder was contingent. Contingent upon Pharon surviving Ernest.

6. The Supreme Court of Texas in GUILLIAMS v. KOONSMAN, 1955, 275 SW2d 579, see p. 582 where they said: "The rule for determining whether a remainder is vested or contingent is thus stated by Gray in his work on The Rule Against Perpetutities "If the conditional element is incorporated into the description of, or into the gift to the remainderman.

then the remainder is contingent; but if, after words giving a vesting interest, a clause is added divesting it, the remainder is vested." 3rd Ed.,sect. 108(3),p.85,see also In Re: Roe's, 281 N.Y. 541, 24 NE2d 322, 131 A.L.R. 712, et sec. The rule as thus stated has been approved and adopted by the courts of this state. JONES v. HEXT, (T.C.A.) 67 SW2d 441, writ refused; RUST v. RUST, (T.C.A.) 211 SW2d 262, opinion approved, 147 TEX. 181, 214 SW2d 462.

7. In Charlie's will (R.27) it is clear that the gift to the remainderman, Pharon, in that first sentence has the conditional elemant incorporated into that description of, or into the gift itself to the remainderman, Pharon. Hence, the remainder is contingent. It is all in just one, long 10 line sentence.

As further stated in GUILLIAMS v. KOONSMAN, supra, at page 582 the TEX.SUP.CT., said: ". . . when the will (R.27) makes survival a condition precedent to the vesting of the remainder, it must be held contingent. In 36 Tex.Jur., Remainders and Reversions, section 7, p. 877. . . . "

8. The conclusion that the remainder to Pharon is contingent is impelled by those words ; " . . ., and at his death (Ernest's) all of said lands and other property shall vest in my brother, Pharon . . "(Emphasis added) Charlie's will (R.27) in that first sentence

ten lines long) of the SECOND provision made the survival of the remainderman (Pharon) a condition precedent to the vesting of the remainder. Fact is, Pharon predeceased Ernest. Pharon was not alive at the time of Ernest's death, the time when all of said lands and other property "shall vest" in Pharon.

9. There is no "but if" in that first sentence. Also, there is no clause added divesting it after words giving a vesting interest. as stated by Gray in his work. However, a conditional element is incorporated into the description of, or into the gift to the remainderman, then the remainder is contingent: . . . ." (Emphasis added).

10. Second, consider the second sentence of the SECOND provision of Charlie's will (R.27) which second sentence (six lines long) reads as follows:

"It is my intention to provide a reasonable income for my brother, ERNEST LUTHER CATLETT, during his lifetime, and at his death for all of the rest, residue and remainder of my property, of whatever kind, sort, classification or category, which shall remain upon his death to be inherited in fee simple by my

brother, PHARON CRAWFORD CATLETT."

11. It is the "Heir's" position that the language of that second sentence of that SECOND provision quoted is crucial to a determination of the intent of the testator, CHARLIE CATLETT.

12. The "Heir" concedes that the law favors a construction that a remainder is vested rather than contingent. Nevertheless, rules of construction are subordinate to the intent of the testator as gathered from the will as a whole, and "if there be any words in the will that indicate, though slightly, that it was not the intention of the testator to vest the estate, they will be given that effect," COKER v. ECKERT, 369 SW2d 473 (TEX.CIV.APP.Ft.Worth 1963) writ ref.n.r.e. (Emphasis added). The rule favoring early vesting of estates does not apply where there are other indicia of intent expressed. WILKES v. WILKES, 488 SW2d 398 at 401 (TEX. 1972).

13. The language of intent in the will of CHARLIE CATLETT, (R.27) is that Pharon would

inherit at the time of Ernest's death that "which shall remain upon his death . . ." This language presupposes that the property devised to Ernest would undergo diminution during the pendency of his estate and implies in Ernest a power to encroach upon, dispose of and consume the property of the estate. MURPHY v. SLATON,(TEX. 1954) 154 TEX. 35, 273 SW2d 588 at p.595-596. Resultingly, Pharon is relegated to the status of a contingent remainder-man whose rights are limited to any property undisposed of at the time of Ernest's death.

DICKERSON v. KELLER, 521 SW2d 288(Tex.Civ.App.) writ,ref.n.r.e., at p. 292,(2) & (3,5).

14. If time is annexed to the substance of a gift as a condition precedent, then the gift is contingent, and it is the uncertainty of a right to future enjoyment that distinguishes a vested from a contingent remainder. JONES v. HEXT, 67 SW2d 441 (T.C.A. Amarillo 1934,writ ref.). In relation to the will of Charlie (R.27), the uncertainty as to future enjoyment lay in the uncertainty as to what would remain in the estate at the termination of Ernest's interest. The express provisions that Pharon's estate would

vest at the time of Ernest's death, and that Pharon would inherit "that which shall remain" at the time of Ernest's death, express a clear intent that Pharon receive a contingent remainder, contingent upon Pharon's surviving Ernest and upon what property, if any, remained inthe estate at the time of Ernest's death. Consequently, Pharon's interest was contingent.

15. All of which, confirms the "heir's" position, that his father (Ernest) inherited 100% of the "heir's" grandfather's & grandmother's AUBREY, TEXAS FARM. Hence, the "heir's" position is true and not without merit nor frivolous.

Charlie Catlett was never married and he never had any children. Ernest was the sole survivor; hence, even under the law of descent & distribution, Ernest would inherit everything, 100%.

C O N C L U S I O N

For the reasons set forth above & following, a writ of certiorari should issue to review the judgment & opinion of the Court of

Appeals of Texas at Ft. Worth, Tx. in this matter.

a) - To explicitly rule on an issue of manifest importance, whether the State of Texas' Probate Court System has a right to sell some 39 acres purported to belong to the estate of Ernest Luther Catlett, Deceased without any "notice" or "hearing" to the real owner, "the heir", M. Wiley Catlett, a citizen of the State of Illinois; thereby, divesting "the heir" of the title which vested in "the HEIR" at the intestate's death (6-1-77), thus depriving "the heir" of his property (that land) without "due process of law" in violation of the 5th and 14th Amendments of the Federal Constitution.

b) - To review the judgment and opinion of the Second Court of Appeals District of Texas (the state court of last resort)which conflicts with the decisions of The Supreme Court of another state and with this Supreme Court of the United States on the same federal question. Yes, even with the decision of the

former C. J. Massey of that same district in READ v. GEE, supra.

c) - To review the judgment & opinion of that Second Court of Appeals District of Texas whose decision has so far departed from the accepted and usual course of Judicial proceedings, as to call for an exercise of this Court's power of supervision.

DATED: NOVEMBER 24, 1992

Respectfully submitted,

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